

## REMARKS

Claims 1-15 are currently pending in the application. Through this paper, claim 1 has been amended. No claims have been added or canceled. Accordingly, following the entry of this paper, claims 1-15 will be pending. Claims 9-12 stand withdrawn.

---

Claims 1-3, 5-8, and 13-14 have been rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. More specifically, the Office Action inquires whether the limitations related to the exposed aluminum cut edge are product-by-process limitations.

Claim 1 has been amended to more clearly point out the claimed invention. It is submitted that these amendments overcome the indefiniteness rejection by more clearly pointing out the structural relationship of the barrier foil which comprises an aluminum foil with an exposed aluminum cut edge that is sealed from exposure to contents of a container. Accordingly, reconsideration and withdrawal of this rejection is requested.

---

Claims 1-8 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Kawajiri, et al. (US Patent No. 4,948,015) in view of Yoshida (US Patent No. 5,147,591).

Independent claim 1 is directed to a fitment that is suitable for use with aseptic containers. In this regard, the claimed fitment employs a barrier foil comprised of an aluminium foil that is coated on both sides with a plastic material but presents an exposed aluminum edge until assembled with the base flange. As described, for example, at paragraphs 0013 and 0047 of the present specification, it is undesirable to have the exposed edge come into contact with the contents of a container to which the fitment is attached in order to prevent oxidation of the foil. The claimed fitment is designed to prevent such contact from occurring. The fitment is comprised of: (a) a base flange, (b) a hollow spout, (c) a removable part within a base of the spout, (d) an overcap for resealably closing the spout, and (e) a barrier foil comprising an aluminium foil coated on both sides with a plastics layer. As noted, the barrier foil presents an exposed aluminium cut edge immediately prior to assembly. To prevent the aluminium cut edge from coming into contact with the contents of a container with which the fitment is subsequently

associated, the barrier foil with the exposed aluminium cut edge is assembled to the base flange such that the aluminium cut edge is covered by a portion of the base flange.

The '015 patent, as discussed in the prior Reply, is directed to a carton with a liquid pouring-out device. The liquid pouring out device 13 comprises a flange 20, a spout 13a, a partition wall 15, a cap 13b, and a thin film 21 that serves as a gas barrier. The thin film 21 includes a barrier layer 22 that is an aluminum layer encapsulated within first and second polyethylene layers. Importantly, the metal film 21 has its peripheral edge concealed by the polyethylene material to prevent corrosion of the barrier layer by acids, as illustrated in Figure 4 and described at column 4, lines 52-57. The '015 patent teaches that the film 21 may be joined to the partition wall, by, for example, insert moulding. This is a technique, well known in the art, in which the film would be placed in a mould used to form the fitment. This contrasts to the claimed invention in which foil is assembled to the base flange of the pre-fabricated fitment. Using a pre-fabricated fitment has significant advantages as it allows the closure construction (described in paragraph 0045 of the present specification) to employ teeth which are moulded on the underside of the flange to facilitate tearing the foil in the opening process (discussed in paragraph 0057 of the present specification).

Furthermore, even if the '015 foil were presented to a pre-fabricated fitment, there would not be an exposed edge because, immediately prior to attachment of the thin film 21 to the partition wall 15, the aluminum barrier layer 22 of the thin film is completely surrounded by polyethylene or other suitable material and does not present an exposed aluminum edge as claimed in claim 1. Claim 1 requires a barrier foil comprised of an aluminum foil coated on both sides with a plastic material and that, immediately prior to being attached to the flange, presents an exposed aluminum cut edge. Further, it is submitted that the such a method of attachment of the thin film 21 of the '015 patent is almost inevitably likely to result in a crevice between the edge of the film and the flange 20, as described in detail at paragraph 0018 of the present specification.

The '591 patent does not cure the deficiencies of the '015 patent. The '591 patent is directed to a lid device for wide-mouthed containers. The Office Action asserts that this reference discloses a rolled edge (3b) in mating contact with a complementary member (4b). The invention, as claimed in claim 1, recites "the exposed aluminium cut edge of the barrier foil

is assembled to the base flange of the pre-fabricated fitment in such a manner that the exposed aluminium cut edge is covered by a portion of the base flange..." A close reading of the '591 patent reveals that the noted portions of the patent are not directed towards a metal foil at all, but rather are directed to a lid body (3), the inner margin of which "formed to define a concentric opening O which is normally closed by a closure member 4." See column 4, lines 18-20 and lines 39-40. As described at column 4, lines 37-38, the lid body (3) has a bent inner margin (3b) for connection to the closure member 2. Importantly, the lid body (3) "is made of a thin metal plate," as noted at column 4, lines 29-30. In this manner, the rolled edge (3b) of the '591 patent provides structural rigidity for the lid, such that when the pull tab is pulled, the closure member will release properly from the lid. Thus, the rolled edge (3b) is not a barrier foil at all, but rather a structural member of the lid.

The '591 patent does discuss a barrier foil at column 4, lines 58-68, where it is described that the upper surface of the closure member is entirely covered by an aluminum foil (7). The '591 patent goes on to describe that preferably the aluminum foil is coated or laminated on both surfaces with layers of synthetic resin. The '591 patent, however, is devoid of any disclosure related to a barrier foil comprised of an aluminum foil coated on both sides with a plastic material and that, immediately prior to being attached to the flange, presents an exposed aluminum cut edge that is covered by a portion of the base flange and sealed from contents of a container that contact the barrier foil when the fitment is assembled with the base flange inside the container.

Accordingly, the cited references do not teach or suggest a barrier foil that, immediately prior to assembly to a base flange, presents an exposed aluminum cut edge that covered by a portion of the base flange as claimed. Based on the foregoing, it is respectfully asserted that independent claim 1 is in condition for allowance, and such an allowance is earnestly solicited.

Independent claim 4 is directed to a fitment that employs a barrier foil comprised of an aluminium foil that is coated on both sides with a plastic material but presents an exposed aluminum edge that needs to be prevented from coming into contact with the contents of a container to which the fitment is ultimately connected. The fitment comprises: (a) a base flange having a first flange surface, a second flange surface that is opposite to the first flange surface, and an flange edge extending between the first and second flange surfaces, (b) a hollow spout

projecting from the second flange surface; (c) a removable part within a base of the spout, (d) an overcap for resealably closing the spout, and (e) a barrier foil. The barrier foil comprises: (i) a foil with a first foil side, a second foil side that is opposite to the first foil side, and a foil edge extending between the first and second foil sides, (ii) a first plastics layer extending over the first foil side, and (iii) a second plastics layer extending over the second foil side. The barrier foil is wrapped over the first surface of the flange such that the barrier foil extends over the first flange surface and the flange edge, and extends over at least a portion of the second flange surface – the surface from which the spout projects.

The foil described in both the '015 patent and the '591 patent covers a single side of a closure surface. In contrast, the invention of claim 4 specifies a barrier foil that extends over a first flange surface, over a flange edge, and partially over a second flange surface that is opposite to the first flange surface. The '015 and '591 patents, taken alone or in any reasonable combination, are devoid of any such barrier foil. Based on the foregoing, it is respectfully asserted that independent claim 4 is in condition for allowance and requested that such an allowance be granted.

Each of claims 2, 3, 5, 6, 7, and 8 is a dependent claim that depends either directly or indirectly from one of independent claims 1 or 4. Consequently, each of these dependent claims is at least allowable for the reasons noted with respect to the independent claim from which it depends. However, each of these dependent claims may be allowable for additional reasons, and the applicant reserves the right to assert any such reason in the future.

---

No claim related fees are believed to be due with this response. In the event any such fees are due, please debit Deposit Account 08-2623. In the event that a petition for extension of time under 37 CFR §1.136(a) is required to have this reply considered and such a petition does not otherwise accompany this reply, please consider this a petition for an extension of time for the required number of months and authorization to debit Deposit Account 08-2623 for the required fee.

---

The application now appearing to be in form for allowance, reconsideration and allowance thereof is respectfully requested. If a telephone conversation will further the

prosecution and/or expedite allowance, the examiner is invited to contact the undersigned attorney.

Respectfully submitted,

HOLLAND & HART LLP

By: 

Kenneth C. Winterton  
Registration No. 48,040  
P.O. Box 8749  
Denver, Colorado 80201-8749  
(303) 473-2700, x2717

Date: July 30, 2009

3918656\_1.DOC